

Rhode Island Economic Development Corporation

Enterprise Zone Council

Minutes of Meeting of September 28, 2004

RIEDC; 4th Floor, Room 1

One West Exchange Place

Providence, RI 02903

Attendance

Name Affiliation

Victor Barros (EDC Staff)

Robert B. Boyer (W.Warwick Development Commission)

Bill Clark (Portsmouth - Business Development)

Ron Caniglia (Council Member)

Kathy Cosentino (City of Providence)

Alan Crisman (Mt. Hope Zone)

David Dodes (DKD Associates)

Bill Dolan (Brown, Rudnick)

Michelle M. Godin (Needs, Inc.)

Carmen Lorenzo (EDC Staff)

Thomas M. Madden (Legal Counsel)

Meryl Moss (Coastal Medical)

Virginia O'Shan (RI Division of Taxation)

Dan Varin (Council Member)

Bruce Vild (Statewide Planning)

Michael Wood (Council Member)

Louise Zachary (Piccerelli, Gilstein)

There being a quorum present, Vice Chairman Varin called the meeting of the Enterprise Zone Council to order at approximately 10 AM.

The first item of business before the Council was the review and consideration of the minutes of the August 24, 2004 EZC Meeting. Mr. Caniglia moved approval of said minutes and Mr. Wood seconded the motion. Mr. Barros noted the spelling correction of Ms. Jessen's name and the minutes were then unanimously approved.

The next item of business before the Council was the recommended list for 2004 membership, attached hereto as Exhibit A. Mr. Barros noted that each of the five businesses included on the list met all of the criteria for membership and on behalf of the Staff, recommended approval.

Ms. O'Shan inquired as to Sardelli's current ownership. Mr. Barros replied that the he understood the company was under new ownership. Mr. Caniglia noted that it was good to see a business from the West Warwick zone included on the recommended list. Mr. Wood asked for clarification on the employee numbers of National Land, which Mr. Barros confirmed. Mr. Caniglia then moved approval

of the recommended list. Mr. Wood seconded the motion. Ms. O'Shan mentioned that West Warwick businesses would soon be ineligible for the program. Vice Chairman Varin noted that the West Warwick zone as currently designated will exist until the calendar year-end of 2005. There being no further discussion, the recommended list for 2004 membership was unanimously approved.

The third item of business before the council was consideration of the recommended list for 2003 certification, attached hereto as Exhibit B. Mr. Barros noted that each of the businesses on the list met the "three prong" test for certification. He further noted that he had notified all member businesses to respond with the necessary paperwork no later than September 17 and estimated that only 10% of the member businesses had not yet complied.

Mr. Vild inquired why Technic, Inc. was listed in two different zones. Ms. O'Shan noted that the same business had two separate locations in Cranston. Mr. Barros acknowledged that Technic had more than one entity in the program.

Mr. Wood then moved approval of the recommended list for 2003 certification. Mr. Caniglia seconded the motion and the list was unanimously approved.

The fourth item of business before the Council was consideration of the revised list for 2003 carry forward authorization, attached hereto

as Exhibit C. Mr. Barros noted that Wilfred Seafood had met the “two prong” test, having met or exceeded its benchmark since the last effective date of certification. He also noted that CVS was applying unused credits since its 2001 benchmark which was the business’ last effective date of certification since the business was not certified in 2002. Mr. Caniglia asked Mr. Barros to confirm that 24 businesses had been authorized to carry forward their credits in 2004. Mr. Barros so confirmed and concurred with Mr. Caniglia that 8-10% of member businesses appeared to be using carry forward authorizations. Mr. Wood and Ms. O’Shan added that CVS participated in the program as many different member businesses. Mr. Caniglia then move approval of the list, Mr. Wood seconded and the revised recommended list for 2003 carry forward authorization was unanimously approved.

The fifth item of business before the Council was consideration of the request for a declaratory ruling from Coastal Medical.

Vice Chairman Varin queried of legal Counsel, Mr. Madden, whether he should recuse himself because “in 1992/3 Brown, Rudnick defended me (and the agency I headed at the time) in a suit brought by the Conservation Law Foundation in Federal District Court, which we won in Federal District Court and again in the First Circuit Court, but does that involvement mean that I should not participate in this matter?”

Mr. Madden asked for any input from Mr. Dolan of Brown Rudnick,

present at the meeting to represent Coastal Medical in its declaratory ruling request. Mr. Dolan replied that he saw no conflict or violation of the Rules of Professional Conduct in his representation. Mr. Madden concurred and commented that “if there’s no ongoing relationship and it goes that far back and it doesn’t relate to the issues before the Council, I don’t see that it’s a conflict.”

Mr. Varin added, “There’s been no subsequent relationship.... O.K., then we will proceed.”

Mr. Barros then introduced the background on the matter, recapping that, “as with any company that submits a year-end certification package, we review it for accuracy; we review it to see if it passes the three-prong test as we refer to it. We received a package from Coastal Medical; we took a look to see if they’ve increased by 5%, full-time, Rhode Island residents – that was a clear-cut win, that they’d passed that portion of the test. Secondly, we take a look to see if the company, in this case Coastal, has all their letters of good standing in place, that also was a non-issue. And then thirdly, we take a look at the total Rhode Island wages paid for the year of certification and the year prior to certification...the rule is that they must increase from the year prior. That is where we ran into an issue, as we do with many companies, the wages decreased by approximately \$254,000 and some odd change....

In 1996, actually May of '96, the Enterprise Zone Council took a look

at a number of denials or appeals of denials of certification, which would have been certification for 1995 – not to confuse matters here with dates – and there were about half a dozen companies that had appealed based on the fact that their wages had decreased due solely to the reason that the owner or owners of the company had taken less money from one year to the next. At that point in time there was no rule 3.17. And the Council had to deny all of the appeals based on our legal counsel's interpretation, pretty much the Council's hands were tied as far as how that legislation read. It said your wages had to increase, if it didn't increase regardless of the reason why, the Council's hands were tied. So we denied all those appeals. But as the Council normally does, when we realize there's sort of an injustice going on and it doesn't really make sense for the spirit of the program [we reconsidered]. Here are companies that have run into some financial difficulties, the owners have decided to take less money, not lay people off, but take less money and continue to grow the company. That seems to be in line with the spirit of the program, of what we're trying to do from an economic development perspective, so we really started to look at how can we address this. Now this was in May of '96. Obviously the legislative session [was] rolling along, so we very quickly pulled together a sub-committee, and Virginia may have been on that or not, I'm not sure – probably not... and John Garrahy was our legal counsel [then], and we started looking at how we [could] address this. And I think what the key point was, we looked at all of the cases that we had denied, and there were probably five or six cases, and drafted legislation...- actually

drafted an amendment - which would become a bill and get submitted to the general assembly that would address this concern, so that the Council had faced the same set of circumstances, could approve those 4, 5, 6 companies, however many there were. So I think it is important – I said I was going to be brief, too – I think it is important to mention that when you look at..., legislative intent, it wasn't the General Assembly that said, "here's what we should do to make the program better". When we look at the intent and how it was supposed to be laid out, it came from the Council and not, I would call on your memory...I think it's very important to know this: it originated at the Council level, it was designed to help companies that were doing the right thing but were just caught up in...the language of the law. Having said that, we drafted a rule which basically met the need of those companies as they were presented, and how we've been able to utilize this exception to the wage test – if you look at the letter, and again I don't want to get into the letter too specifically, it is very clear, if you look at past usage, as far as how the Council has been able to grant approvals for companies that have decreased, it's very apparent that any company that has more than five owners in the company, because of the 20% ownership, and how we've been utilizing it- actually, how we've been interpreting the law and the regulation – any company with more than five owners would not be eligible.

Now, I can tell you firsthand, I don't think that was the intent when we sat down and decided to make this exception. However, ...the

Enterprise Zone program is made up of 85% small businesses. They're not the SBA definition – under 500 employees – they're Rhode Island's small businesses – 25 employees, 30 employees, with the exception of Sardelli which was on the report – you can see it's mostly a small company generated program. So I don't think we really looked at the big issue if it came to a company that had multiple owners.

Now, we're going to have a discussion, very in-depth discussion I'm sure, of what a definition of owners is, ownership, issue of owner, person, if there's any ambiguity. But this is important to know, that it wasn't the legislature who decided, in their, you know, vision, to change the program. It happened here in this room and we do have Dan and Virginia to fall back on as far as what we looked for to happen with this change in the program. So- and we talked about the issues behind Coastal, so I don't want us to deal any further or go over the actual appeal that was so spelled-out in this letter, so that's all I wanted to add to the conversation at this point.”

Mr. Dolan, legal counsel to Coastal Medical, then introduced himself, thanked the Council and proceeded to make a presentation on behalf of Coastal.

“I think you've all- the Council members have all been granted a copy of the letter, and I'd certainly be prepared to answer any questions that Council members may have.... I simply want to

underscore the points that we've made in the letter so that the Council can have a fully-informed basis with which to make a decision for this very important issue for my client, Coastal. By way of background, as you may know, Coastal has been a growing, developing enterprise physician practice in Rhode Island with offices in Providence and other parts of the state for many years, and it's continuing to expand and grow. Each year it has added employees. As Mr. Barros pointed out, we've met the benchmark for increasing our numbers of employees, and the company currently has...expansion plans underway.... It's looking carefully at acquiring some sites – it currently leases sites but is looking at actually buying buildings in the Providence/Seekonk area and we're hopeful that this issue, if it's resolved to our satisfaction, can assist us in rolling out those development plans. But the issue is, as Mr. Barros so aptly pointed out, is whether or not Coastal qualifies as physician shareholders. We're all owners of the business and constitute all of the ownership of the business, qualified owners within the meaning of the statute such that their wages, which admittedly declined in the years in question, can be excluded from the calculation, and if they are, as we point out in the letter,... then Coastal qualifies for the increase in wages that's required by the statute. Now why is it that we contend that the physician shareholders who make up Coastal are qualified to be owners under the statute? Well, at the risk of being a little didactic – I've got these boards behind me and [I'll make use of them].... There are really five reasons that I want to point out to you, and they are explicated in the letter, but I just want to point them out

to you.

Number 1, there is an ambiguity....and ambiguity appeared to manifest itself in a number of instances. First of all, the statute clearly speaks in terms of owner or owners as being potentially excluded from the [wage rule], yet the statute only defines 'owner' as a person, it does not define 'owners'. Now one would never say, well, it simply means that we simply extend the definition of owner to owners plural. But clearly that question, that ambiguity that owners is not defined within the statute. Secondly, there's this phrase "indicia of ownership." Now, I will tell you that I have looked at that, and that phrase – Mr. Madden may have pointed it out to you – comes up in a variety of different contexts. And most pointedly it comes up in the context of,...among other things, the Internal Revenue code section 1031 which deals with like kind exchanges, and it's in there because it's designed to ensure that when someone's doing a swap of property it's trying to take the benefits of that, the persons involved have sufficient vested ownership interest to qualify for the benefits of the program. But that's just one definition that's in the law, not in the statute. It's not defined in the statute. If the legislature meant stock ownership or management control or things like that, they could have said so. They didn't, they left it blank. I know Mr. Barros said that the exception emanated from the Council and that may be true, and oftentimes in Rhode Island law we don't have the benefit of any legislative intent, because the laws are simply passed and we're left to try and discern what they mean, but in this case, if

we want to take at face value what Mr. Barros said, there was clearly intent on the part of the Council and in turn, presumably, the General Assembly, to give a more expansive treatment of the term and thus the phrase indicia of ownership. But at least, at the least, there's an ambiguity. And when we have an ambiguity in a statute, in any statute or principles of statutory interpretation that are created and adopted by Rhode Island Supreme Court and others, so you look to purpose and policy of the statute. And if you look at your purposes and policies, they're right in the legislative findings of your statute. It's to promote the very kind of business that Coastal has, period, end of story. So if you find that there is an ambiguity in your carefully-crafted exception, this is the result that you must [reach].

Secondly, there is a concept in the law, and this is absurdity even for those of you who probably can't read my handwriting. There is a concept in law that an interpretation of the statute that yields an absurdity, or which nullifies the intended effect of the statute, should not be found. And here's an example. I think it goes against Mr. Barros' comment. If you adopt an interpretation of the word 'owner' to mean person with a minimum 20% stake, and if you say, well, that includes owners, so you have to have persons who at least have a 20% stake, you can only have a company with five shareholders that qualifies for that treatment. Now, does CVS have five shareholders? I don't think so. I think they have thousands. And I think it's hardly possible that the legislature meant to limit the scope of the statute, the definition of owners, to that kind of scenario, otherwise you'd cut

out a whole swath of companies that would otherwise qualify for treatment under the exception. So you do not want to impose an interpretation on a statute that will yield an absurdity such as that, or will it nullify the overall intent of the statute which is to promote these kinds of companies....

The third point is, when you have- when you're presented with these kinds of quandaries, in terms of statutory interpretation, and there is available in a statute another alternative interpretation, which is fairly read from the meaning of the statute, and which promotes the overall goals of the statute, you adopt that alternative. And what's that alternative here? The alternative here is to use what I refer to in my letter as a reasonable construction for the term throughout, and the term being how do you define 'owners'? Well, if you define 'owner', as the statute says, as a person with at least 20%, and there's no definition of 'owners' in the statute, we have to use that phrase 'person', one would think that the plural owners would mean the plural persons, persons with at least 20% collectively. And I think the reason that's a reasonable alternative construction of the statute is that one view of this statute in this exception is that it's designed to ensure that there's a certain critical component, critical mass of ownership, that is committed and dedicated to the enterprise. And that's exactly the concept that comes in a 1031 like kind exchange, the Internal Revenue Code interpretation I alluded to earlier. The reason that there's an indicia of ownership required in that statute, the Internal Revenue Code, and it's, some minimum percentage, is

that the code and the government wants to make sure that there's a sufficient contribution by the owners to the business, and to make sure that only those persons who do that qualify. So the alternative here is that you must define 'owner' to include 'person'. If we're going to use the plural and we're going to define it, we can use the plural in the definition as well.

The last point I want to make, and I think it's evident by the conduct of the Council this morning in respect to CVS on an admittedly confusing point – I had trouble following that dialogue, but my experience is usually that Council staff people know a lot more than the lawyers or anybody else, and that's a good thing. But I think it underscores the point that you need to, in the case of tax statutes, particularly ones that are close calls, bear [in mind], and the reason for that is, you know, tax statutes are passed and they adjust people's rights and we want to make sure that they're construed in a fashion that is most favorable to the taxpayer. And in this case, if you have to choose between alternative constructions, one that simply defines the word 'owner' to mean person with a minimum of 20%, and yields this absurd result and which is contrary to the stated policies and purposes of the statute, pick the one that [favors the taxpayer], do the right thing.

Discussion then continued regarding the 20% ownership definition and the way in which owners of Coastal Medical make decisions and

are treated.

Ms. O'Shan then added that "...you look at who the owners are and anybody who owns 20% or more gets to remove his wages from the calculation to see if the company otherwise grew." She further cautioned, "Don't confuse two tests. The benchmark refers to the headcount of people employed. The wage test refers to the W3 test that comes out and it can't be in a multi-locational business, the total Rhode Island wages, designed to be taken right from the W3 package that says Rhode Island taxable wages last year, Rhode Island taxable wages this year [and this is what must show an increase of at least one dollar, or meet the ownership exception]."

Mr. Wood inquired whether the 40 shareholders [of Coastal] were considered employees for the benchmark number? Ms. Moss replied, "...[A]re the 40 owners considered employees for the benchmark purpose? That's a question that we would have to do some research [to answer]. First of all I need to qualify that Coastal Medical has locations across the state, and they only have participation in five of the Enterprise Zones, and [the physician] owners are scattered throughout the state, but my recollection is that there are a few owners who are in some of those Enterprise Zones, and they [came on board] a long time ago, so they've been included in the running total, but I don't recall....

General discussion about the purpose of the wage test continued with Mr. Barros noting , “It’s basically to keep companies from cannibalizing the location outside the zone.... [T]hat lets you know that they’re not...decreasing employment at other locations outside of the Enterprise Zone in the state.”

Vice Chairman Varin then asked Zone Council legal counsel, Mr. Madden, “what is the down side of supporting this, in your opinion? What...what could happen next?

Mr. Madden replied, “Well, to answer that I want to back up a little bit, and look at the framework to build discussion, and I think the most important understanding to keep in mind when you look at this issue, is this -- the whole discussion comes under the framework of the wage test. Only individuals who file W-2s earn wages, only individual human beings, not groups of human beings, whether they be owners or employees, only individuals. Only individuals report wages and would be included in that total W3 number, okay? So there is no ambiguity given that framework.

If we refer back to Rule 3.17(f), any reference to ‘owner’ or ‘owners’ or ‘person’ or ‘persons’ all have to kick back to an individual human being who can report wages. Inasmuch as the cases cited in Mr. Dolan’s letter addressed that; I’ll tell you the cases were varied and interesting and somewhat unusual, they referred to these general principles of law that are true, but there is a clear overriding principle

of law -- that is that when something is clear and unambiguous on its face in a statute, that clear and unambiguous meaning holds true and there's no need for a court to mess with it, if you will.

There's also a really nice, more recent case called *Cookson v. Clark* that clearly sets out that when a tax exemption is an issue, which is more analogous to a tax credit that we're talking about, the propensity to favor the taxpayer is exactly the opposite. The court would generally favor not allowing an exemption...so the presumption at law is exactly opposite what's on the board, when you're talking about an exemption rather than a general tax law.

So that's the way I understand this, and I've tried to get the minutes from when this whole issue was discussed [by the Council] back in 1996 and I've called the Secretary of State's office and they don't have the minute files going back that far, and for some reason the minutes that seem to be issue are missing from the EZC's records and I've got to call into the former [EZC legal] counsel, John Garrahy; he's trying to find the minutes... But as I understand it, the whole discussion back in 1996, in creating this exemption, was to help keep afloat real small businesses [whose owners] were cutting their own wages in order to keep their businesses afloat. The whole framework was discussing not 40 or more owner businesses, but businesses that were more on the scale of mom and pop, or smaller businesses that would be more characteristic of most of the businesses in the program. So as I understand it, the intent of the Council at that time,

and we don't have the intent of the legislature as it passed the legislation, but the intent was really to help out these real small businesses that were cutting their own- the principals' wages in order to keep the businesses afloat within the zone.

What's the downside to expanding that exemption, to opening that door? I guess it changes that policy, and does the Council want to do that and should the Council do that? You've got to think back to what that original intent was, you've got to look at the regs and the law and see that there is no ambiguity when you're talking only about the exemption within wages.

[T]he issue that there are CVS's with hundreds of employees, getting tax credits, is separate and apart from this. They're not getting exemptions on these wage issues.... It's a totally different issue, it's in a totally different section of the program. In this narrow exemption on wages, it's perfectly clear to me that a reasonable person reading these regs, can understand exactly what they mean. And to my mind, without having the benefit of seeing the minutes back from '96,...a line was drawn in order to buttress these real small businesses with a few owners, who were trying to keep their businesses afloat and maintain employment in their businesses within a zone."

Mr. Barros then commented, "One thing to add about the small business perspective, and I was here in '96. Unfortunately we don't have those minutes, we're trying to find them, but best recollection- I

would have to counter that by saying I don't know if it was directed specifically at small business, and if this Coastal case was a case we had dealt with in '95. I can honestly say I think we would have changed the way we wrote the regs, because this mirrored the spirit of what we trying to do. I think the reason it's more small business-gearred is because the six examples we had were all small businesses. The Enterprise Zone program again, does have about 85% small, micro- you know, micro business in Rhode Island.... It's not a small business program, it's a business development program. And I think part of the reason, if you look at the intent, and [how the] exemptions work specifically better in a small company, it's because that's ...the sample of businesses we were dealing with back in '95.

So- I don't know [that our intent was] specifically for small business, but because that was the only thing we had to work with at the time, that's why [the exemption] was crafted.

And to be honest with you, part of it was that the former legal counsel was given, not carte blanche, but a lot of room to sort of write the regs, and when I saw indicia of ownership, not even knowing what that meant, and we had some problems – I know Alan was [concerned] originally and we were a little uncomfortable with it, but we were under the gun. This was May, and the legislature ends in July, we needed to get something passed because we were trying to even get it retroactive for the six businesses that were sort of spearheading this. Unfortunately it was not able to be passed

retroactively, or had no retroactive provision built in, so those companies lost out, but it was really something that we rushed through, I would say in all honesty, again, not having the minutes reflect specifically on what happened, but calling on my fading 40-year-old memory here, that it was something we wanted to get through very quickly, so we wouldn't be faced with the same scenario when certification came around next year, to companies that we knew were adhering to the spirit of the legislation growing, owners taking a decrease to recapitalize the company, to give it energy to help it grow....

Ms. O'Shan then replied to a question from Mr. Wood regarding whether the Tax Division didn't really have the ultimate say in the matter, "No – as long as [a member business is] approved for certification, the decision lies squarely before the Council.

Mr. Madden than added, "When we were talking about CVS we were talking about the number of employees test, and when we're talking about Coastal Medical here we're talking about the W3 wage test. Those are separate – one looks at employment within the zone and one looks at wages paid in aggregate across the state."

Discussion continued as to whether the matter had to be decided at the present meeting -- to which Mr. Barros commented, that really all of the information available on the issues was on the table or had been previously considered by the Council.

Discussion then turned again to whether the real intent of the exemption was for small/few owner businesses.

Ms. Moss then added that the owners of Coastal were all personally engaged in the company as decision makers and had made decisions over the years to continue to invest in the business and grow the business rather than to distribute the money earned by the business to its owners.

Ms. O'Shan then clarified the wage test again at the request of Mr. Wood, "Does the removal of a [qualifying owner's] wages from last year's W3 and this year's W3 result in the fact that with the exception of that [owner] (who owns 20% [or more]), the wages grew?"

Ms. Moss then further elaborated on the decision making process at Coastal Medical, where she explained that the owners are actively involved in decisions such as hiring and that the outcome of this situation may make the difference between hiring 5 additional employees or one additional employee.

Vice Chairman Varin then asked Mr. Madden, "What happens if the Council approves this request and asks you to produce a declaratory ruling?"

Mr. Madden replied, "Then it sets a precedent for any other appellant

who meets substantially similar facts, and the Council would then have to make subsequent approvals based on those same criteria.... [T]he precedent would hold where the facts are substantially similar to whatever the declaratory ruling addresses, and whoever was seeking to get that loophole in the wage test, if you will, would have to argue that the facts are substantially the same and there could be arguments made against it, but if the facts are indistinguishable, the precedent would hold.”

Mr. Dolan commented that the declaratory ruling could limit the facts.

Mr. Crisman then inquired of Mr. Madden, whether the Council could set out a revised exemption in the declaratory ruling.

Mr. Madden replied, “My gut on that is that I don’t think it’s really prudent for the Council to wholesale legislate within its declaratory ruling. If you want to do that sort of thing and if you really wanted to alter the way the wage test is structured, we would do far better, the Council would do far better, to amend the legislation and concurrently or immediately thereafter, the rules. You know, to really set all this up within a declaratory ruling is a sloppy way to go about it, and can create complications in terms of precedent down the road.”

A consensus than appeared to develop among the Council members

present that a declaratory ruling be issued favorably toward Coastal Medical.

Mr. Wood expressed reservations that the minutes of the 1996 amendment were unavailable.

Mr. Barros added that the Council had subcommittee meetings back in 1996. “The subcommittee is where the rule was drafted. There are no minutes for the subcommittee meeting. What would happen is the subcommittee would come and make a recommendation to the Council, so all that we have is the conversation that took place at the Council level, which was far less, less in-depth than what happened at the committee level. So as far as its relevance, I don’t know how relevant it would be. The Council discussion – because it could have been a very cursory type discussion at the Council level.”

Vice Chairman Varin added, “I’m influenced favorably by the absurd results and about observing the purpose of the program, and I think both of those [concerns] should lead to [a ruling for Coastal Medical].

Mr. Wood then moved that the Council direct its legal Council to prepare a declaratory ruling in favor of certifying Coastal Medical based on a wage test exemption. Mr. Caniglia seconded the motion and the motion was unanimously approved.

The next item of business before the Council was the revised

re-designation questionnaire for Enterprise Zones.

Mr. Barros explained that this form would apply to all future requests for designation.

After some brief discussion regarding population relevance and measurement, along with membership statistics and the possibility of quarterly or annual reporting to the Council from the zones, Mr. Barros noted that he would examine the timeline of the five year standard designation and look to reporting requirements as a way to aid in better managing the zones.

The next item before the Council was old business, under which the Council revisited the West Warwick Zone 2 year re-designation.

By way of introduction, Mr. Barros summarized the Council's recent correspondence and dealings with the West Warwick zone and noted that the West Warwick Town Manager will come before the Council to present his response and will be on the agenda for October.

Mr. Barros continued, "I'd also like to take a moment to acknowledge David Dodes, for those of you who don't know, he's the former...town planner for the town of West Warwick, and I would just like to thank David for his work with me on behalf of the Council. As you all know, David's has attended Council meetings in the past representing the town of West Warwick, and has worked well with EDC staff on all EZ

related issues. Needless to say, I'm sorry to see you go and I wish you the best going forward. David, do you want to make any comments?"

Mr. Dodes then said the following: "Yeah, I won't take much of your time, you've had a long meeting and I want to get out of here as much as anybody does. What I want to do, and I had been under the impression that the presentation for the update of the report...would be today. I'm here today because I will not be [around] in October, so I can't come at that point, but there's some information that I feel is vitally important that you have to know in general about what the situation in West Warwick is, and more importantly was, in regard to the Enterprise Zone program. And by way of that let me just very briefly give you some history.

When I retired in October of 2002, I was never told until after I had accepted the position, that I was the manager and local point of contact for the Enterprise Zone program. And quite frankly, I had no idea what the Enterprise Zone program was. I found out a couple of months after I'd been there that I was in charge and was told there's a meeting in Providence, be there, and I came to the meeting. And over the two years that I've been involved, I must say that I must compliment you for the diligence and the enthusiasm for the work that you do. The first couple of meetings I went to, I was saying to myself, "what am I doing here? What is this all about?" On the physical planner, on the town planner this obviously is very heavily

leaning towards economic and economic development and it wasn't something that I was brought on board in West Warwick to handle. I was on the job less than a year, having worked with Victor and the rest of you here, when I got the questionnaire for the re-designation. Again, another light bulb went off – I had no idea that Enterprise Zones had to be re-designated every five years, but anyway, I took the time to go through it, I needed a great deal of help getting through it, Victor was more than helpful, and so were other people who [helped me] get the information I needed. I have a lot of information that I'm not going to bore you with today, of memos back and forth to the Town Manager asking for some help, in getting some cooperation from town departments in regards to this statistical information that I needed, and as the Biblical expression, I was a stranger in a stranger new land.

I really wasn't certain of what I was doing and how I was going to do it. The cost- by the way, I got fired, basically the main reason, because I've got no other reasons because of it, was because of my terrible, grievous error in the re-designation application for the Enterprise Zone, and the fact that this group, they were two years instead of five years. What people in town didn't want to understand was....

So I was under the impression, and felt quite confident, that working with the staff here, with the Town Manager and myself, that a period of six months maximum, we would get totally back on track and do it

the right way and satisfy all of the concerns here at the Council. Obviously that hasn't happened. The Town Manager took the position that I was to blame for what happened, and he then proceeded to tell people on the Council that we got a two-year extension instead of a five-year extension. That became a cause on their behalf, and I won't go into the details, but those of you who know West Warwick, and I imagine you all do better than I do, it's a political snake pit, and for whatever the reason was, I was the target, and it was like, "ooh, we've got something to hang our hat on – he screwed up the Enterprise Zone re-designation, so you know, let's beat him over the head". That was seven months ago, and it took them until a couple of weeks ago to finally make that decision.

But what I want you to understand is that my responses, specifically in the re-designation questionnaire, dealing with the management plan...was quite brief, quite short and absolutely the truth, as I saw it, from my position, as an experienced planner, an experienced person in government, and seeing the way the West Warwick government was operating, and focusing my political science background on the situation in regard to the Enterprise Zone. And I wanted to just read to you, very briefly, 'cause there's only four small lines here, my responses to this questionnaire regarding management plans, and I will readily admit to you that there was one mistake I made, and it was ...

"At the present time the contact person for the West Warwick

Enterprise Zone program is the Town Planner [who is charged with the responsibility] of processing certificates of good standing and applications for admission into the program, along with providing information as to whether or not any address located in the- whether or not any address is located in the Zone. In addition, he attends Enterprise Zone Council meetings when his schedule permits”.

Second, “Other than the outreach work done by the Central Rhode Island Development Corporation, and some contact by the Community Development Office, there is no formalized Enterprise Zone advancement program” – advancement in quotes.

Three – “Due to staff funding and time constraints, the planner cannot and should not be considered the manager of the program”.

I readily admit that that was a mistake, and it shouldn't have- I shouldn't have written “and should not be considered”, I should have just said, “should not manage the program”. Obviously I was appointed the manager of the program, and by the way, that's in the job description of the planner, which I was never shown before I got out of there, so I didn't even know that was part of my duties.

And the last one –

“The Town should consider the funding for a position, even if only part-time, of an Enterprise Zone manager, or as an alternative,

increase its contribution to the Central Rhode Island Economic Development Corporation to provide a more intense outreach on behalf of the Town.”

That was my response to where we were going in the future. The rest was in response, from what I’ve been told, there was no problem with it, even internally in town.

So because of those four offenses, I became a pariah, so to speak, because I ruined the entire program for West Warwick. Now, just- this is- I’m going to conclude it now, but it’s just giving you some historical background that’s factual, and stuff that I found in the files,... regarding the Enterprise Zone, so that you get the idea of what happened, or more correctly, what didn’t happen, over the last five years in West Warwick in regards to the Enterprise Zone. Quite frankly, I could describe it as nobody was questioning whether the program was working well or not working well, there was no yearly reporting as to which way we’re going, or as they say, everybody was fine, fat, dumb and happy, and as long as nobody asked questions, everything was fine. I made the mistake, not realizing it was a mistake, of telling the truth in my report to you regarding what I saw as the program activity in West Warwick. I remember my comment was, “would you have preferred that I lied, simply to make it easy to get to five years?” I didn’t get a response – they said to me, “yeah, you should have lied, this way we could continue going along as we were and nobody would’ve said nothing”. But, you know, I only know

one way to do things and that's the right thing.

Anyway, the report in 1994 by the Town Planner regarding the need of the Planning Department, the then mayor – one paragraph, Staffing. By the way, as you probably know, I'm the Lone Ranger there, I have nobody working with me. I do all the planning work, I do the work, whatever it was, and there wasn't a great deal, to be quite honest with you, regarding the Enterprise Zone. I processed paper.... It's just a bad situation. But anyway – 1994 – “Staffing of the West Warwick Planning Department is far below the level of Planning Departments in surrounding towns and cities. As a result, the Town Planner has had to work an excessive number of hours, including nights and weekends.” So going back into 1994, everybody in West Warwick was put on notice, you know, we've got to have some help in the Planning Department to get all of the work that's necessary to be done. In the 1998 application for re-designation, which was the one previous to this one in 2003, questions: “The Town pledged to create a new position of Enterprise Zone/Economic Development Coordinator.” Was this position created? If not, why? And I won't bother going through the whole response.... The responses were basically excuses for the fact that the government changed in '94 from a mayor to a town council, and things like that. So going back to 1998, the Town had already said “we intend to appoint somebody to do the Enterprise Zone work and to do economic development work”, obviously nothing was done.

In the minutes of the May 25 meeting of this year, the Town Manager came here and made his presentation to you in an attempt to straighten out, correct, whatever word you want to use, my response to this re-designation questionnaire. Comments about what he said: “We pay \$10,000 to the Rhode Island Development Corporation to help us sell the program”. I said that in my response, that they are the main arm of the outreach for the Enterprise Zone program. “We pay the Chamber of Commerce some money every month and every year, to send people to us that are [interested in the program]”. Well, I don’t know if that’s true or not, and I’m not saying it isn’t true. The fact of the matter is, after this meeting I went and spoke to the Chamber of Commerce Executive Director and said, “How much involvement do you have with the Enterprise Zone program?” Her response was, “Well, if somebody comes in and is looking for something, I either send them to you or to the Economic Development Commission Chairman, whose office is right down the street, to talk about the possibility of locating in West Warwick.”

We had three go out to [historic] mills that hadn’t been used at all that are coming back. Now...the manager’s comments...but he did mention, ...zoning regulations to allow those mills to come back. And quite honestly, I’m not patting myself on the back. If I didn’t like that regulation, those mills would still be vacant or, no pun intended, been on a treadmill, trying to get themselves.... So I was actively involved in moving things forward.

Now, ...the Development Commission- regarding the Development Commission in West Warwick, I believe it was the President or the Chairman of that, meeting with the Development Commission, almost twice a week or three times a week, and we tried to do the things that are right for the Town of West Warwick. I'm going to be politically correct and [unintelligible] completely. That doesn't happen. It's not the way things happen in West Warwick. And he also said, "we sent the application back to you", meaning this group, "without being reviewed by anybody other than David". If I'm the manager of the program and applications come in, I was not told by anybody, nor did I think it was necessary to have any kind of other approval before sending them up here to you and say, "look, here's an application [needing a] certificate of good standing or somebody who's [able to help]".

Too many things about the real seriousness of what the intent in West Warwick [was as] to this program.... 1994 and again in 1999...we had some action in 2000, the Town tried to include another area of the Town into the Enterprise Zone, adding another, census tract. It didn't pass. Nothing's been done in at least the two years that I've been there, it's never been brought up, it's never been mentioned, why don't we try and get this thing added? I have no idea why, but that's the situation.

Lastly, this is a new understanding of what the situation is. Packets like this, which were the packets that were given out to people who

were interested in the Enterprise Zone, I did not know existed until four or five months ago when the Town Engineer resigned. I went into his office to look for some information, and in the corner of a closet in the Town Engineer's office, there were about 50 of these.... I took one out and I looked at it and found out it's a package for the Enterprise Zone. Victor mentioned something to you earlier today, about the company that's going into the Food Bank building in West Warwick. The application – 1994. Now tell me that in 1994 nobody had enough interest to go and figure this thing out and straighten it out, however, and there's no date on this, but trust me, it was a month ago, very hard handwriting to read. Wolfgang sent me this memo, attached to this and said basically, 'I need this updated by the end of next week. So after everything was done, after he rewrote my response, sent it on to Victor, and I got a copy of it, and I've read it, and quite frankly I think it's nothing but a shuffle off to Buffalo and dancing, and it's a game of cover your rear ends, because the idiot planner had the audacity to write something that was truthful and he got into trouble for it. And I got into trouble for other things in town because all I did was tell the truth. Simple things, like no, you can't tear a historic building- I mean, you can't tear down a historic building. You can sell it, but you use it, reuse it. The oldest school in town was being touted for sale, had been torn down and a little plaza full of shopping centers were going to be put in its place. I insisted that that not be- that that not happen, I had somebody interested in converting it into an office building, without going into details, ultimately he had to do a lot of political wrangling and maneuvering.

This man – he was awarded the bid and he was going to make it into an office building. But the night I got over to the public hearing and said that, I walked out.... And let me tell you, when I came to West Warwick, I had a master's degree in planning and about 40 years of experience. When I left West Warwick I had a Ph.D. – Planner Having Difficulties.

I cannot believe that I was foolish enough to step into that situation, but I had found out that there have been four planners through that office in the last five years, which says something about the way the Town operates. And all four of them came from out of Rhode Island, because people in the planning business in Rhode Island since have said to me, “well, it's obvious – nobody in Rhode Island who knows the planning business would ever want to work in West Warwick....”

I'm just saying to you that I believe, from my background in government and my background in political science, and the way things should work, I [don't believe that I] was wrong at all. I think it was like being hit on the head with a 2 by 4. Get your act together, make this program better, make it work, and we'll be happy to do what we have to do. I ...was thinking of dropping the whole program, and it was like, oh my God, we don't have the five years between- at the end of two we're out of business. And I said to him, if the Governor drops the whole program, you'll only..., so don't worry about that, And it's just a matter of we're doing this on the side of the people in West Warwick, the leadership in West Warwick, to really

want to do the job right, and it's always been a situation where, "oh, you can do that, you can take the [bull by the horns], you have plenty of time to do that". And because of that, nothing really gets done the way it should be done.

And I won't bore you with the list of things that I accomplished in the two years, except for one – for twelve years the comprehensive plan of the Town of West Warwick was not approved by the State of Rhode Island. It sat on the shelf from 1992- sorry, 11 years- to 2003. With the help of a consultant at admittedly a very reasonable price, which they caught me on but..., he and I dished everything up and for all I know, right now, the plan may have been approved. It was due to be approved a week or so after I departed on the 17th of September.

So I'm here- you know, as a private citizen, I'm not here for revenge or retribution or anything. I want to make sure that my reputation is such that I'm not the idiot that caused West Warwick to lose its designation in the Enterprise Zone, and quite frankly a number of members of this group of people who were in the room the day that I made the presentation, and the vote was taken, said to me, "please understand, David, that it wasn't you, it was just the whole situation". And I remember Dennis Langley saying, "somebody in West Warwick was negligent". And at first I thought he was directing at me, and as the conversation went on, it was just an indictment, if you will, of the way the town operated.... The report you got from the manager is not much different from what I said, for the equivalent spin on it to make

sure that the five years is given back, the pressure is off, and nobody points the finger at him and says, “where were you for the last six years?”

So I just want you to understand that you should look at this very carefully, because as I say, I admire the time and effort and commitment you people have for what you’re doing, and I think that if you want this program to work statewide, you’ve got to take people, or the towns, rather, like West Warwick, and say “listen, we’re dragging you along with us, like it or not, and the quality of the work that you produced will be at least on a par with everybody else, maybe not the best, but we certainly don’t expect to be prepared to let this go on, and let you just ride along without anybody looking over your shoulder, because I can tell you right now, I was fired because of political reasons and none other, and I’m a big boy and I’ve been in politics myself, and I understand that and that doesn’t bother me. What does bother me is being fired for the wrong reasons. And believe me, if they were the right reasons I would have said, “where do I sign to resign so I can get out of here before you really beat me up?” And by the way, I was told I could look for a job and just resign, and as Wolfgang walked out of my office I said, “By the way, you’re going to have to fire me”. And he just looked at me like I came from another planet, because no one had ever done that, and he ultimately sent me a letter, firing me, and then it had to be ratified by the Council, and for your information it was a 3 to 2 vote on the Council. One party- the other party didn’t seem to think that the firing was

warranted and some of the comments by some of the- one of the Councilmen was, "Why don't you talk to the Planner about this Enterprise Zone report and get his side of the story, and maybe you will change the way you're going to vote tonight?" because the fact of the matter was, other than this one member of the Council, nobody ever came to me to ask, "what happened? Why is this?" All they got was one side of the story from the Town Manager, and as I say, it began with cover your backsides, and given that situation, I don't have to tell you what he said in regards to the situation.

So I just want to leave you with that, and I have all of the information, if you think it's worthwhile I can make copies and send them to you for you people to look at. I'm certainly- if you want to and I don't want to spend more time and taking more time will answer any questions you have now, or if any time in the future...you need any kind of [assistance on this], feel free to contact me, and I'm willing to set the record straight. I mean, I've got nothing to gain. That was the last thing in the world I really want to do is be vindicated....

Mr. Wood then commented, "I would not be interested in seeing any of this information. It doesn't matter to me why this community needs to [get] itself together with or without this planner, and to present the right thing to this body to continue on with [the Enterprise Zone program]. I do not consider any of this discussion relevant until we see what the community brings forth to support its designation. This is a program for the businesses and the

employees, not for the politicians and the people working in the government or the town council. This is something that's supposed to be [designed to] promote economic development, and the political stuff that goes on in the community, although it may have some minor relevance, is not the issue of what we should be considering, so although [I understand the] presentation here, I think the issue is down to whether what we get back is acceptable or not. It doesn't make any difference to me why you got fired...and I think that's solely what we ought to base our decision upon.

Vice Chairman Varin then commented, "Well, what we have to do is look at the application for re-designation, which I gather is going to happen at the October meeting, and proceed from that point. Is there any other business to bring before the Council today?"

Mr. Caniglia then inquired whether in a situation such as Mr. Dodes' presentation, the Council could go into executive session or post executive session

Vice Chairman Varin then confirmed with Mr. Madden that an executive session should be scheduled in advance on the agenda for the meeting, but for certain very limited circumstances.

After some further discussion on the meeting format, Mr. Caniglia moved that the meeting be adjourned. Mr. Wood seconded the motion. The motion was unanimously approved and the meeting

adjourned at approximately 11:40 AM.